Supreme Court, U.S.
FILED
FEB 21 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-6997 (7)

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

EUGENE JOHN CARELLA,
Appellant,

v.

CALIFORNIA,
Appellee.

On Appeal from the Appellate Department of the Superior Court of California, County of Los Angeles

---

JOINT APPENDIX

CHRISTOPHER D. CERF*
(Appointed by this Court)
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* Counsel of Record

STATEMENT AS TO JURISDICTION FILED MAY 17, 1988
PROBABLE JURISDICTION NOTED NOVEMBER 7, 1988

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RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
6/25/85	Criminal Complaint Filed.
1/14/86	Motion for Mistrial.
	Defendant fined for failure to answer question and ordered into custody.
	Court finds defendant financially qualified for public defendant.
2/6 /86	Notice of Motion to Dismiss Complaint.
	Notice of Motion to Declare Presumption Unconstitutional.
3/7 /86	Motion to Dismiss Denied.
	Motion to Declare Presumption Unconstitutional denied.
3/17/86	Jury Sworn.
	Defendant found in contempt and fined.
3/19/86	Defendant found in contempt and taken into custody.
3/20/86	Defendant moves to dismiss at close of State's case.
	Motion denied
3/21/86	Jury instructed and retires to deliberate.
3/24/86	11:17 a.m. Jury returns with question.
	Partial jury instructions read. Jury retires to deliberate at 11:25 a.m.
	11:34 a.m. Jury returns verdict: Guilty on Count I and Not Guilty on Count II.
4/7 /86	Sentence imposed.
9/8 /86	Defendant arrested and imprisoned for probation violation.

DATE	PROCEEDINGS
8/17/87	Trial court certifies Settled Statement on Appeal.
9/8 /87	*Defendant moves to strike settled statement.
9/30/87	*Motion to Strike Denied.
1/26/88	*Defendant files motion for transcript.
1/28/88	Motion for Transcript denied.
2/3 /88	Memorandum, Opinion & Order filed.
2/18/88	*Motion for Rehearing and Application for Transfer.
2/21/88	Motion and Application denied.

* Not reflected on Docket Sheet but pleading is in Record and is reprinted in Joint Appendix.

IN THE MUNICIPAL COURT
OF BEVERLY HILLS JUDICIAL DISTRICT
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

No. M83675

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

EUGENE JOHN CARELLA,
Defendant.

Filed Pursuant to Section 17b4

COMPLAINT

MISDEMEANOR

Personally appeared before me this 24th day of June, 1985 A. Munoz-Flores, BHPD of the County of Los Angeles, who being first duly sworn on oath, upon information and belief complains and says:

That on or about the 3rd day of May, 1985, at and in the County of Los Angeles, State of California, the crime of GRAND THEFT AUTO, in violation of Section 487 (3), Penal Code of California, a misdemeanor, was committed by EUGENE JOHN CARELLA who did willfully and unlawfully take a certain automobile then and there the personal property of MPG Car Rental.

COUNT II

For a further and separate cause of complaint, being a different offense from, but connected in its commission

with, the charge set forth in Count I hereof, complainant further complains and says:

That on or about the 3rd day of May, 1985, at and in the County of Los Angeles, State of California, the crime of UNLAWFUL TAKING OF A VEHICLE, in violation of Section 10851, (a) Vehicle Code, a misdemeanor was committed by EUGENE JOHN CARELLA who did willfully and unlawfully drive and take a certain vehicle, then and there the personal property of MPG CarlRental without the consent of and with intent to deprive the said owner of title to and possession of said vehicle.

Subscribed and sworn to before me on June 24, 1985.

/s/ A. Munoz-Flores
A. MUNOZ-FLORES

/s/ [Illegible]
Judge of the above entitled Court

Filed June 25, 1985

IN THE MUNICIPAL COURT
OF BEVERLY HILLS JUDICIAL DISTRICT
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

No. M83675

(Title Omitted in Printing)

JURY INSTRUCTIONS

☒ GIVEN

☐ REFUSED

Filed Mar. 21, 1986

S. M. SEIDLER
Clerk

By J. TAUGER
Deputy Clerk

(g) Unlawful Taking of Automobile

Analysis

Inst. No.

Grand Theft of an Automobile (1979 Revision) 14.35

Vehicle Taking—Violation of Vehicle Code Section 10851 (1979 Revision) 14.36

Auto Taking—When Acts May Constitute Either of Two Crimes (1972 Revision) 14.37

CALJIC 14.35 (1979 Revision)

GRAND THEFT OF AN AUTOMOBILE

[Defendant is charged in [Count 1 of] the information, with the commission of the crime of grand theft, a violation of Section 487 of the Penal Code.]

Every person who steals, takes or drives away the automobile of another with the specific intent to deprive him permanently of his property, is guilty of the crime of grand theft of an automobile.

In order to prove the commission of such crime, each of the following must be proved:

1. That a person took or drove away the automobile belonging to another person, and

2. That when such person took or drove away the automobile he had the specific intent to deprive the owner permanently of his property.

CALJIC 14.36 (1981 Revision)

VEHICLE TAKING—VIOLATION OF VEHICLE CODE SECTION 10851

[Defendant is charged in [Count 2 of] the information, with the commission of the crime of violation of Section 10851 of the Vehicle Code.]

Every person who drives or takes a vehicle not his own, without the consent of the owner, and with specific intent to deprive the owner either permanently or temporarily of his title to, or possession of, the vehicle, whether with or without intent to steal the same, is guilty of the crime of violation of Section 10851 of the Vehicle Code.

In order to prove the commission of such crime, each of the following elements must be proved:

1. That a person took or drove a vehicle belonging to another person,

2. That the other person had not consented to such taking or driving of his vehicle, and

3. That when such person took or drove the vehicle he had the specific intent to deprive the owner either permanently or temporarily of his title to or possession of the vehicle.

CALJIC 14.37 (1972 Revision)

AUTO TAKING—WHEN ACTS MAY CONSTITUTE EITHER OF TWO CRIMES

The unauthorized taking or depriving by one person of the automobile of another may, depending upon the facts, constitute either of two crimes.

The defendant is charged in Count 1 with grand theft. Every person who steals, takes or drives away the automobile of another with the specific intent to deprive the owner permanently of his property is guilty of grand theft regardless of the value of the automobile.

The defendant is charged in Count 2 with a violation of Section 10851 of the Vehicle Code which provides that any person who drives or takes a vehicle not his own, without the consent of the owner thereof, and with the specific intent to either permanentiy or temporarily deprive the owner of his title to or possession of such vehicle, is guilty of a public offense.

The distinction between the offenses is in the type of specific intent required:

1. To constitute the crime of grand theft there must be a specific intent to permanently deprive the owner of his property.

2. To constitute a violation of Vehicle Code Section 10851 there must be a specific intent to either permanently or temporarily deprive the owner of his title to or possession of the vehicle.

The defendant may be found not guilty of both counts. If you find him guilty as charged in either of the two counts, you must find him not guilty of the other.

If you are convinced beyond a reasonable doubt that defendant is guilty of one of the two counts but you have a reasonable doubt as to which of the two counts defendant is guilty, it is your duty to find him guilty of a violation of Section 10851 of the Vehicle Code as charged in Count 2.

D. MISTAKE

Analysis

	Inst. No.
Ignorance or Mistake of Fact	4.35
Ignorance or Mistake of Law (1979 Revision)	4.36

CALJIC 4.35

IGNORANCE OR MISTAKE OF FACT

An act committed or an omission made under an ignorance or mistake of fact which disproves any criminal intent is not a crime.

Thus a person is not guilty of a crime if he commits an act or omits to act under an honest and reasonable belief in the existence of certain facts and circumstances which, if true, would make such act or omission lawful.

PART 14

CRIMES AGAINST PROPERTY

A. THEFT

(a) Forms of Theft

Analysis

Inst. No.

Theft—Forms of 14.00

CALJIC 14.00

THEFT—FORMS OF

The crime of theft may consist of (1) theft by larceny, (2) theft by trick and device, (3) theft by embezzlement, or (4) theft by false pretense.

(c) Trick and Device

Analysis

Inst. No.
Theft by Trick and Device—Defined (1979 Revision) 14.05

CALJIC 14.05 (1979 Revision)

THEFT BY TRICK AND DEVICE—DEFINED

[Defendant is charged in [Count 1 of] the information, with the commission of the crime of grand theft, a violation of Section 487 of the Penal Code.]

Every person who obtains possession of personal property of another by means of false promises without intention to perform or by means of fraud, artifice, trick or device with the specific intent to deprive another person permanently of his property, is guilty of the crime of theft by trick and device.

In order to prove the commission of theft by trick and device, each of the following elements must be proved:

1. That a person obtained possession of personal property of some value belonging to another person,

2. That such person obtained possession by making [a] false promise[s] which he had no intention of performing or by means of other fraud, artifice, trick or device,

3. That in surrendering possession of such property, the other person did not intend to transfer the ownership, and

4. That the person who obtained possession did so with the specific intent to deprive the other person permanently of his property.

(d) Embezzlement

Analysis

	Inst. No.
Theft by Embezzlement—Defined (1979 Revision)	14.07
Embezzlement—Trustor May Be Agent for Owner	14.08

CALJIC 14.07 (1979 Revision)

THEFT BY EMBEZZLEMENT—DEFINED

[Defendant is charged in [Count 1 of] the information, with the commission of the crime of grand theft, a violation of Section 487 of the Penal Code.]

Every person to whom property has been entrusted who fraudulently appropriates such property to his own use or purpose, is guilty of the crime of theft by embezzlement.

In order to prove the commission of theft by embezzlement, each of the following elements must be proved:

1. That a relation of trust and confidence existed between two persons,

2. That pursuant to such relationship one of those persons accepted property entrusted to him by the other person, and

3. That with the specific intent to deprive the other person of his property, the person fraudulently appropriated or converted it to his own use or purpose.

*CALJIC 14.08

EMBEZZLEMENT—TRUSTOR MAY BE AGENT FOR OWNER

If you find that money or property was entrusted to the defendant, and thereafter was fraudulently appropriated by him, it is immaterial whether such money or property was entrusted to the defendant by the owner directly or by a third person acting for the owner.

(f) Degrees of Theft

Analysis

Inst. No.

Grand and Petty Theft—When Distinction Depends on Value ($400, Point of Demarcation) (1983 Revision) ..14.21

Grand and Petty Theft—When Distinction Depends on Value ($100, Point of Demarcation) (1983 Revision) ..14.22

Grand and Petty Theft—Theft by Agent, etc., Over $400, in Twelve-Month Period (1983 Revision) ..14.25

CALJIC 14.21 (1983 Revision)

GRAND AND PETTY THEFT—WHEN DISTINCTION DEPENDS ON VALUE ($400, POINT OF DEMARCATION)

When property such as that alleged to be involved in this case is taken by theft, if the value of the property exceeds four hundred dollars, the crime is grand theft; if the value is four hundred dollars or less, the crime is petty theft.

* * * *

PEOPLE'S SPECIAL INSTRUCTION #1

Presumption Respecting Theft by Fraud

Intent to commit theft by fraud is presumed if one who has leased or rented the personal property of another pursuant to a written contract fails to return the personal property to its owner within 20 days after the owner has made written demand by certified or registered mail following the expiration of the lease or rental agreement for return of the property so leased or rented.

Penal Code Section 484 (b)

PEOPLE'S SPECIAL INSTRUCTION #2

Presumption Respecting Embezzlement of a Leased or Rented Vehicle

Whenever any person who has leased or rented a vehicle wilfully and intentionally fails to return the vehicle to its owner within five days after the lease or rental agreement has expired, that person shall be presumed to have embezzled the vehicle.

Vehicle Code Section 10855

PEOPLE'S SPECIAL INSTRUCTION #3

Manifestation of Intent

The intent or intention is manifested by the circumstances connected with the offense.

Penal Code Section 21 (a)

Intention to defraud: sufficiency

Whenever an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association, or corporate, whatever.

Penal Code Section 8

PEOPLE'S SPECIAL INSTRUCTION #4

This case is not a criminal prosecution for a civil debt.

People v. Carr, 229 Cal App 2d 74, 77 Vehicle Code Section 10851 and 10855

CALJIC 16.000 (1979 Revision)

COMPOSITE BASIC INSTRUCTION FOR MISDEMEANOR TRIALS

I

Duties of Judge and Jury

Ladies and Gentlemen of the Jury:

Now we come to that part of the trial where you will be instructed on the law.

Whether a defendant is to be found guilty or not guilty depends upon both the facts and the law.

As jurors you have two duties to perform in order to reach a verdict. One duty is to determine the facts of the case from the evidence received in the trial and not from any other source. The word "fact" means something that is proved directly or circumstantially by the evidence.

Your other duty is to apply the law to the facts as you determine them and in this way to reach your verdict.

It is my duty in these instructions to explain to you the law that applies to this case. You must accept and follow the law as I state it to you.

You must not be influenced by pity for a defendant or by prejudice against him.

You must not be biased against the defendant because he has been arrested; charged with a crime or brought to trial. These facts are not evidence of his guilt.

You must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling.

II

Composition of Instructions

The instructions are to be considered as a whole and each individual instruction is to be considered in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

For simplicity, the masculine form of pronoun as used in the instructions applies equally to all persons.

III

Statements of Counsel, etc.

You must not consider any statement by either attorney as evidence. If the attorneys have agreed to any fact or if any fact has been admitted, that fact is proved.

You must not consider as evidence any offer of proof that was rejected or any evidence that was stricken out.

As to any question to which an objection was sustained you must not guess what the answer might have been.

You must not assume to be true any insinuation suggested by a question asked a witness.

IV

Direct and Circumstantial Evidence

Evidence consists of testimony of witnesses, writings, material objects, or anything presented to the senses and offered to prove the existence or nonexistence of a fact.

Evidence is either direct or circumstantial.

Direct evidence is evidence that directly proves a fact.

Circumstantial evidence is evidence that proves a fact from which an inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.

Both direct evidence and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any greater weight than the other.

* * * *

CALJIC 16.000 (1979 Revision)

COMPOSITE BASIC INSTRUCTION FOR MISDEMEANOR TRIALS

VII

Credibility of Witness

Every person who testifies under oath [or affirmation] is a witness. You are the sole judges of the believability of a witness and the weight to be given to his testimony.

In determining the believability of a witness, you may consider anything which tends in reason to prove or disprove the truthfulness of his testimony, such as: his conduct, attitude and manner while testifying; his capacity to hear or see that about which he testified and his ability to recollect or to relate such matters; whether or not there was any bias, interest or other motive for him not to tell the truth; [any statement previously made by him that was consistent with his testimony] [or,] [any statement previously made by him that was inconsistent with his testimony;] [his character for honesty or veracity or for dishonesty or untruthfulness;] [any admission by him that he did not tell the truth;] [his prior conviction of a felony].

If you believe that a witness willfully testified falsely as to a material fact, you should distrust the rest of his testimony and you may disregard all of his testimony.

However, you should bear in mind that discrepancies in a witness's testimony or between his testimony and that of others, if there were any, do not necessarily mean that you should disbelieve the witness, because forgetting is common and innocent mistakes are not unusual. Two persons witnessing the same incident often see or hear it differently.

You also should consider whether any such discrepancy concerns an important fact or only a trivial detail.

• • • •

XI

Presumption of Innocence and Burden of Proof

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to a verdict of not guilty. This presumption places upon the State the burden of proving him guilty beyond a reasonable doubt. Reasonable doubt is defined as follows:

It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

* * * *

XIV

[Specific Intent]

[In the offenses with which the defendant is charged [in Counts 1 and 2,] there must be a joint operation of act or conduct and the required specific intent and unless such specific intent so exists that offense is not committed.]

XV

Take No Cue from Judge

I have not intended by anything I have said or done or by any question I may have asked to suggest what you should find the facts to be or that I believe or disbelieve any witness.

If anything I have said or done has seemed to suggest my opinion as to the facts, you will disregard it and form your own opinion.

XVI

Duty to Deliberate

When you start your deliberations, it is important that you avoid expressing a fixed opinion or a determination to hold out for a certain verdict.

Each of you must decide the case for yourself but should do so only after an open-minded discussion of the evidence and instructions with the other jurors.

Once you have reached a conclusion, you should not change it merely because other jurors disagree with you. However, if you become convinced you have reached a wrong conclusion, you should not hesitate to change it.

You should remember in deciding this case, that you are not advocates or partisans for either side but that you are the impartial judges of the facts.

XVII

Avoid Considering a Penalty

In your deliberations, or in arriving at a verdict, you must not discuss or consider the subject of penalty or punishment. That is a matter which must not in any way affect your decision.

XVIII

Concluding Instruction

You shall now retire and select one of your number to act as foreman, who will preside over your deliberations. In order to reach a verdict, all twelve jurors must agree to the decision [and to any finding you have been instructed to include in your verdict]. As soon as all of you have agreed upon a verdict, you shall have it dated and signed by your foreman and then shall return with it to this courtroom.

3/24/86

11:05 AM

In Count 1, does the presumption of 'intent', as stated by the Court, include the legal requirement of 'permanent deprivation of possession'?

~~Is~~ it considered permanent if he keeps the car over 5 days of the contract date? Or 30 days?

QUESTION FROM JURY

Williamson & Williamson

7449 MELROSE AVENUE, LOS ANGELES, CA 90046

IN THE MUNICIPAL COURT
OF BEVERLY HILLS JUDICIAL DISTRICT
COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA

(Title Omitted in Printing)

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT; DECLARATION OF EUGENE J. CARELLA, ESQ. IN SUPPORT THEREOF; MEMORANDUM OF POINTS AND AUTHORITIES

TO: DISTRICT ATTORNEY OF LOS ANGELES COUNTY AND HIS DULY-AUTHORIZED DEPUTIES.

PLEASE TAKE NOTICE that at 9:00 A.M. in Division 5 of the above-entitled court, Defendant EUGENE JOHN CARELLA will move the Court for an Order dismissing the subject complaint with prejudice. Said motion will be based upon grounds as appearing herein and is further based upon this notice, Declaration of Eugene John Carella—together with all papers, pleadings, transcripts, records, and the like on file herein, and such oral and documentary evidence as may be presented at the hearing on said motion.

DATED: January 10, 1986

By: /s/ Eugene J. Carella
EUGENE J. CARELLA

DECLARATION OF EUGENE JOHN CARELLA

I, EUGENE JOHN CARELLA, declare and state as follows:

1. That the following declaration is made for purposes of this motion only and by its making I waive no constitutional right, or other right, state or federal, accruing to me.

2. That I am the defendant in the aforecaptioned matter.

3. That at no time was I ever furnished, or did I ever receive, or have in my possession, control, dominion or the like, title to the vehicle which is the subject of the instant complaint, nor was I ever permitted access or inspection to said document.

4. That the keys to, as well as the subject vehicle, were voluntarily and consentually furnished to me by MPG Car Rental and with the permission of its duly-authorized agents/employees on or about March 27, 1985 in Beverly Hills, California.

5. *That at no point in time* was I ever informed, or did I have knowledge that, MPG revoked its consent or permission accorded me with respect to said vehicle.

6. That at all material times the subject vehicle was parked daily at my residence located at 10776 Wilshire Boulevard and was otherwise accessible to MPG Car Rental personnel from 9:00 PM to 10:00 AM each successive day, said residence being approximately 1½ miles from MPG Car Rental offices, the exact location of said defendant's residence *at all times being known to MPG Car Rental and its employees.*

7. That at no point in time did I ever have any intent whatsoever to willfully and unlawfully take the subject vehicle nor did I ever have any intent whatsoever to,

or did I in fact, willfully and unlawfully drive and take the subject vehicle without the consent of and with intent to deprive said owner of title to and possession of said vehicle as charged, and that I do not know of nor have I ever heard of Ciera or Ciero Car Rental.

8. That on June 5, 1985 I contacted Detective Richard Schwab of the Beverly Hills Police Department in response to a telephone call received at my residence on June 3, 1985 and spoke to a Jennifer Ayres of the Beverly Hills Police Department who advised me said Detective Schwab was on an extended vacation. I then informed her as to my address, telephone number, and the fact that I was a federal practitioner who practiced in numerous federal courts and to have Detective Schwab contact me upon return from his vacation.

9. That I received no contact whatsoever from any personnel of the Beverly Hills Police Department after my June 5, 1985 contact until I was falsely arrested at my residence while I was asleep in the early morning hours on June 27, 1985.

10. That I am the only person authorized to receive or sign for certified or registered mail and at no point in time did I ever sign for any correspondence from MPG Car Rental or its duly-authorized employees.

11. That at all material times commencing on or about March 27, 1985 MPG Car Rental had actual knowledge of my residence address and telephone number and the location of the subject vehicle and knew that I was a permanent resident at that location and had been for approximately two years.

Executed under penalty of perjury in Los Angeles, California this 10 day of January 1986.

/s/ Eugene John Carella
EUGENE JOHN CARELLA

MEMORANDUM OF POINTS AND AUTHORITIES

Preliminary Statement

Defendant, EUGENE J. CARELLA, Esq., a federal practitioner, rented an automobile, the subject of this complaint, pursuant to a civil contract on or about March 27, 1985. On June 27, 1985 Defendant was falsely arrested at his residence, which location was known to MPG Car Rental and the Beverly Hills Police Department as being a little more than a mile from the MPG rental offices. Defendant was falsely charged with Grand Theft Auto Theft and Unlawful Taking of Vehicle and a misdemeanor complaint improperly lodged against him.

Discussion

(Count II)

The documents filed by The People supporting their misdemeanor complaint verifys that Defendant is charged in Count II thereof with unlawfully taking of a vehicle, e.g., "who did willfully and unlawfully drive and take a certain vehicle then and there the personal property of Ciero Car Rental without the consent of and with intent to deprive the said owner of *title to and possession of said vehicle.*" (emphasis added).

The charge against Defendant in Count II *is conjunctive.* Defendant demonstrates conclusively that he in no way had control, dominion, custody or knowledge of the legal title to the subject vehicle, nor did he even know or hear of said legal owner. Accordingly, in light of these evidentiary facts it is impossible for Defendant to have been able to deprive said owner of his or her legal title. This irrefutable fact renders Count II of the subject complaint fatally infirmed and defective and requires that it be forthwith dismissed with prejudice or stricken in the alternative.

Discussion

(Count I)

As more fully appears from The People's supporting documents incorporated in the misdemeanor complaint herein, MPG Car Rental knowingly sent a letter to Defendant's old residence address (and never received by defendant) even though MPG had actual knowledge of defendant's true and correct address. On or about March 27, 1985 when they furnished defendant the subject vehicle with their permission and consent. Defendant has stated and shown in his declaration that MPG had freely, voluntarily, consentually furnished him the subject vehicle, and that at no point in time did defendant have any knowledge that MPG had withdrawn its permission or consent. Further, defendant's declaration evidences a clear lack of intent by defendant to willfully and unlawfully take the subject vehicle, and, in point of fact, the subject vehicle was parked religiously each and every night at his residence from 9:00PM to 10:00AM of the following morning, making it accessible to MPG for inspection, access or the like. The fact that MPG Car Rental officers were a little more than a mile from defendant's residence where the vehicle was located each night is further compelling evidence that dispels and vitiates any criminal intent or specific intent by defendant to commit the acts charged in the complaint and further command that Count I be dismissed with prejudice or stricken in the alternative.

CONCLUSION

Defendant, a federal practitioner, who with the consent and permission of MPG Car Rental was furnished the subject vehicle falsely and maliciously arrested on June 27, 1985. There was no intent whatsoever by defendant to unlawfully or willfully take the subject vehicle nor was there any intent to deprive the legal owner

of its title or possession. At all times to defendant's knowledge the consent and permission of MPG Car Rental was efficacious, and that at all material times the subject vehicle was located at his residence in Westwood and capable of being easily inspected or accessed by MPG Car Rental, which residence was known by MPG Car Rental and was only a mile or so from their offices. There is no basis for the invocation of the criminal process with respect to the matters before the Court, inasmuch as they are purely and simply a function of civil contractual law and should be adjudicated in accordance with said procedures for customary contractual resolution.

Accordingly, for all the foregoing reasons, Defendant respectfully moves that Count I and Count II of the instant misdemeanor complaint be dismissed with prejudice and otherwise stricken.

DATED: January 10, 1986

By: /s/ Eugene John Carella
EUGENE JOHN CARELLA
Defendant

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this the 6 day of February 1986 I served a true copy of the foregoing NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT, etc. by personal delivery on the following:

Deputy District Attorney
BEVERLY HILLS MUNICIPAL COURTHOUSE
Burton Way
Beverly Hills, California

/s/ Eugene John Carella

MUNICIPAL COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
BEVERLY HILLS JUDICIAL DISTRICT

(Title Omitted in Printing)

Filed August 14, 1987

PROPOSED SETTLED STATEMENT ON APPEAL; PARTICULARIZED GROUNDS ON APPEAL

Appellant appeals from a misdemeanor conviction of Grand Theft Automobile following a jury trial. Appellant originally filed a proposed settled statement. The People filed a response to the proposed settled statement. In December 1986, on the date of the settling of the statement, Appellant failed to appear.

The Court accepted the People's statement of facts as the settled statement.

Appellant filed an objection to the settled statement. The Appellate Department of the Superior Court remanded the settled statements by the trial court because grounds of appeal were missing and specific portions of record were not referred to.

Appellant failed to appear on June 12, 1987, the date of the new settling of the statements on appeal. The Court ordered a warrant for appellant's arrest, setting the bail at $10,000.

A new date of August 12, 1987 had been set for a settling of the statement of appeal. Defendant failed to appear.

It should be noted that it is the appellant who is appealing, not the People. Therefore, the grounds of appeal would not be supplied by the People. However, since it is unclear whether Appellant will appear at the hearing on August 12, 1987, the People will include in this proposed statement on appeal, in its entirety the grounds which appellant initially provided. Since these are appellant's grounds of appeal, the People cannot supplement them in any way.

The following is the appellant's grounds on appeal taken from his original proposed statement on appeal.

GROUNDS ON APPEAL

1. Appellant's right to a speedy trial guaranteed by state and federal constitutions was grossly abridged by the Court's denial of Appellant's Motion for Mandatory Dismissal pursuant to Section 1382 of the Penal Code, and said denial constitutes reversible error.

2. The trial court's failure to stand recused and disqualified in accordance with Appellant's Disqualification Petition and its failure to permit Petition *to be filed* or lodged constitutes reversible error.

3. Trial court's extreme and gross bias and hatred against Appellant and in favor of the People—including threats of oppression, incarceration and punitive fines—deprived Appellant his right to receive a fair trial and other Constitutional rights.

4. Court's refusal to dismiss the Complaint and declare the statutory presumptions contained in Section 10855 of Vehicle Code and 484 of the Penal Code unconstitutional, constitutes an abuse of discretion and reversible error.

5. Trial court's refusal and failure to instruct the jury in accordance with Appellant's Written Jury Instructions and Charges filed by Appellant on March 18,

1986 and its failure to make any *sua sponte* instructions regarding Appellant's defense that "legal title and permission to the subject vehicle was entrusted to him pursuant to written contract" constitutes infirming reversible error.

6. Trial court's instruction to the jury over Appellant's continuing objection with respect to the presumptions contained in Vehicle Code Section 10855 and Penal Code Section 484, deprived Appellant of his Constitutional rights to a jury trial and fair trial and otherwise constitutes fatal reversible error.

7. Trial court's refusal to admonish and prohibit the prosecution for its misconduct in presenting prejudicial charts and graphs *not in evidence* to the jury and prosecutor's reference to such documents through the course of the trial and other prosecutorial misconduct constitutes infirming reversible error and denied Appellant's right to a fair trial.

8. Trial court's failure to grant Appellant's Motion to Dismiss on the grounds that the subject criminal proceeding is a prosecution for a "civil debt," for enforcement of a "civil contract," constitutes reversible error.

9. The court's refusal to dismiss the complaint on the grounds that the statutes in question are void for vagueness and ambiguity thereby denying Appellant his due process rights constituting reversible error.

10. Trial court's refusal to grant Appellant's Motion to Dismiss at close of People's case on the basis of insufficient evidence constitutes reversible error.

11. Trial court's refusal to grant Appellant's Motion for Mistrial and for Motion for Judgment Notwithstanding the Verdict constitutes prejudicial, reversible error and gross abuse of discretion.

12. Trial court's refusal to strike People's Jury Instructions or to Accord Appellant Hearing on Jury

Instructions constituted prejudicial reversible error and abuse of discretion.

13. Trial court's refusal to grant Appellant a Probation Hearing and accord him a Pre-Sentencing Report after it had set the matter for probationary hearing on *May 13, 1986*—together with arbitrary and capricious pre-sentencing conditions and revocation of Appellant's own recognizance status and placing him under excessive bail and physical danger constituted a denial of due process of law and is reversible error.

14. Trial court's denial of Appellant's Motion for Judgment in Arrest of Proceedings for Fraud and Trial Irregularities, including jury tampering and constituted reversible error.

15. Court's failure to properly arraign Appellant on the subject charges—together with the failure of the Court to properly discharge its duties to Appellant at arraignment of sentencing and judgment denied Appellant his right to a fair trial.

16. Trial court's refusal to permit inquiry and questioning by Appellant into juror pool and the undue voir dire restriction into bias and conflict of interests of jurors constitutes infirming reversible error.

17. The trial court *ex parte*, in collusion with The People, conspired to fix the jury pool and jurors assigned to the case, and the jury verdict entered on March 24, 1986 was secured by fraud, trickery, deceit and conspiracy between the trial court and the People and various jurors and alternate jurors.

18. The verdict of the jury entered on March 26, 1986 is unsupported by any evidence and was the product of a common enterprise to harm Appellant irreparably and his reputation and livelihood and secured by fraud.

19. The trial court's denial of Appellant's Motion For a New Trial constituted infirming reversible error.

20. The trial court's failure to admit Appellant's evidentiary exhibits and/or Take Mandatory Judicial Notice of Legal Proceedings in which Appellant was participating in California and other forums constituted infirming reversible error.

21. Trial court's refusal to Strike People's Evidentiary Exhibits that were NOT properly authenticated constituted infirming reversible error and should have been suppressed.

22. The trial court's imposition of sentencing Appellant to six (6) months in County Jail with no probation —together with three (3) years of parole—is a cruel, unusual punishment and in excess of the statute and unconstitutional, and must be vacated forthwith, especially in light of the fraud associated with the subject sentencing to prevent Appellant from prosecuting other matters as an attorney and/or plaintiff.

23. For such further grounds as appear from the transcript of evidence and/or proposed statement filed herein, including but not limited to, the fact that the subject arrest and consequent proceedings were a fraud, nullity and carried out in total absence of any probably cause and trial court's refusal to dismiss proceedings were in concert with third parties to harm and falsely imprison Appellant.

The following is the People's proposed statement on appeal which has been certified by the court as the settled statement on appeal:

On March 25, 1985, EUGENE JOHN CARELLA rented a car from MPG Car Rental, located in Beverly Hills, from Jessica Patricio. The rental agreement was for 30 days. The agreement signed by Appellant included in it the legal obligation to return the automobile on the agreed date. The next day on March 26, 1985, Appellant exchanged the car for another and signed an agreement to return the car on April 26, 1985.

Appellant extended by telephone the rental agreement until May 3, 1985. Appellant did not return the car on May 3, 1985. The owner of MPG, Galil Yaacov, telephoned Appellant numerous times. He even went to the location listed as Appellant's business but was never able to contact Appellant. It was discovered that Appellant did not live at the address he listed on the rental agreement as his residence. Appellant actually resided at the address which he listed on the rental agreement as his business.

Appellant never returned any of the phone messages left by MPG owner, Yaacov. Mr. Yaacov sent registered letters to both addresses listed by Appellant on the rental agreement. The letter addressed to the location listed as his residence on the rental agreement was returned by the post office as stating on the letter, "Moved with no forwarding address." The demand letter sent to the address left by Appellant as his business address on the rental agreement was not returned by the post office.

Mr. Yaacov continued to telephone Appellant at the number left as his business but later found to be a hotel. His calls were not returned. Mr. Yaacov asked the person taking the messages, the hotel clerk, if Appellant was receiving the messages that he was sending. The clerk stated that Appellant was receiving the messages. The registered letter dated May 16, 1985, demanded the immediate return of the car or the matter would be turned over to the police.

On June 3, 1985, Mr. Yaacov reported the theft of the car to the Beverly Hills Police Department. Beverly Hills Detective Schwab left messages to Appellant but they were not returned. An arrest warrant was obtained and on June 27, 1985, Appellant was arrested and the car was recovered in the adjoining parking lot of the address which Appellant listed as his business address.

The car had an excessive amount of mileage on it from the date rented. The brakes were worn down so low that they needed replacement. The car also had minor dents around the body. At no time did Appellant ever contact the MPG rental office after he extended the return of the car rented car to May 3, 1985. Appellant never paid for the use of the car other than the initial $400 deposit.

Two witnesses testified for the defense. The first was Appellant's fiancee. She testified that at the time of the events of this case, she was living with Appellant at the address he listed on the rental application as the business address. She testified that she didn't remember receiving any messages to return the rented car, although she normally left the "message gathering" duties to Appellant.

She testified that on a Saturday, May 11, 1985, she remembers going to a gas station to fill up the rented car with gas, accompanied by Appellant. It was in the evening hours and close to the MPG rental office.

She knew that Appellant has a large amount of cash on him at the time. She did not know what he was going to do with the money. She stated that she normally rode the bus and not in Appellant's rented car. She knew nothing of the rental agreement. She believed there was a consipracy against Appellant and herself which involved the Central Intelligence Agency and the Beverly Hills Police Department.

The second witness to testify for the defense was Jennifer Avres who was employed as a cadet at the Beverly Hills Police Department. She stated that as a part of her duties, she would occasionally answer the telephone. She said that she did work on June 3, 1985 and that she had no memory of whether Appellant telephoned Detective Schwab.

After a jury trial, Appellant was convicted of Grand Theft Auto as a misdemeanor, Penal Code Section 487 (2) and acquitted of Unlawful Taking of a Vehicle, Vehicle Code Section 10851. Appellant was sentenced to six months of county jail and three years formal probation.

Respectfully submitted

IRA REINER
District Attorney of
Los Angeles County

By

/s/ Helen Woznak for
GREGORY ALARCON
Deputy District Attorney

IN THE APPELLATE DEPARTMENT
OF THE SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Appeal No. CRA 24001

LAMC M 83675

EUGENE JOHN CARELLA,
Petitioner/Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,
Respondent/Plaintiff.

APPELLANT'S MOTION TO STRIKE "SETTLED STATEMENT" AS FRAUD AND SHAM AND TO VACATE JUDGMENT AND SENTENCING; DECLARATION OF EUGENE J. CARELLA, ESQ; MEMORANDUM OF POINTS AND AUTHORITIES

Filed September 8, 1987

TO: THE JUDGES OF THE APPELLATE DEPARTMENT, SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES.

COMES NOW Appellant, EUGENE JOHN CARELLA, ESQ., pursuant to the Rules of Court and applicable provisions of Appellate Procedure, and does hereby move this Court for an order striking as fraud and sham the settled statement purportedly certified by the trial court on or about August 17, 1987, as more fully appears in *EXHIBIT "F"* attached herewith *(more than ten (10) months after Appellant filed his timely Proposed Settled*

Statement and Particularized Grounds on Appeal). Appellant also moves this Court for an order vacating the judgment and sentencing of the trial court entered on April 7, 1987, as a matter of law.

In support of said motion, Appellant respectfully shows as grounds that the actions of the trial court are grossly violative of the Rules of Court, are not in conformity with the applicable authorities and rulings, and are otherwise designed and calculated to frustrate and deprive Appellant of a meaningful appellate review and complete record on appeal, and otherwise undertaken with a purpose to deny Appellant proper appellate review, in contravention of the due process and equal protection provisions of the state and federal constitutions.

Said motion is based upon all papers, pleadings, records, documents, declarations, and the like on file in the aforecaptioned matter—together with such additional evidence and materials as may be further adduced by Appellant, together with the Memorandum of Points and Authorities attached herewith.

WHEREFORE, based upon the gross irregularities and post trial misconduct by the trial court as evidenced herein seeking to obfuscate her criminal actions at the time of trial to the present from active appellate consideration by this Court by obstructing Appellant's right to trial transcripts of evidence or to a true and correct settled statement, and to perfect a true and sufficiently complete Clerk's Record on Appeal, Appellant respectfully moves the settled statement of the trial court be forthwith stricken and the judgment and sentencing of April 7, 8, 1986, vacated; and for such further and additional relief deemed necessary and proper.

Dated: August 31, 1987

By: /s/ Eugene J. Carella,
EUGENE J. CARELLA, ESQ.
Appellant-Petitioner

DECLARATION OF EUGENE J. CARELLA, ESQ.

I, EUGENE J. CARELLA, ESQ., declare and state as follows:

1. That I am the appellant herein.

2. That I am vigorously and resourcefully prosecuting the instant appeal, but have been substantially impeded and abridged by the trial court's misconduct from securing the trial transcripts of evidence and a "true and correct statement on appeal" in violation of Rule 184 of the California Rules of Court and from securing a true and complete record on appeal in violation of Rule 183 of the Rules of Court.

3. *That on September 8, 1986,* after a request by this Court (Appellate Department), I *physically* visited the Los Angeles Municipal Court, Beverly Hills Judicial District, located at 9355 Burton Way, Beverly Hills, California, to seek the advices of the Court Reporter, Robert Marsh, concerning the timetable for filing of the trial transcripts, when I was ordered falsely arrested again and imprisoned by Judith O. Stein with the purpose and intent to impede and abridge my prosecution of this appeal and other important substantial litigations being conducted by me in the State of California and other forums.

4. That on September 18, 1986, Acting Presiding Judge Reese of this Court by written order granted me until October 20, 1986, to file a proposed statement on appeal because I had been actively and intentionally frustrated from securing the actual reporters transcripts of evidence of trial proceedings. (Said Order is identified as *EXHIBIT "A"* and attached herewith.)

5. That on October 20, 1986, I filed Appellant's Proposed Statement on Appeal and Particularized Statement of Grounds on Appeal and served a copy on all parties-in-interest and this Court—a true copy of said statement consisting of twenty-six (26) pages of evidence identified

as *Exhibit "B"* and specifically incorporated and attached herewith as *EXHIBIT "B"*.

6. That at *no* point in time did the Respondent District Attorney ever contact me at my business address respecting the proposed statement or furnish me with any amendments to my proposed statement until on or about December 10, 1986—*more than a full month and a half after the statement was filed and well beyond the fifteen (15) days statutorily permitted to Respondent* (see *Rule 185*).

7. Nor did Respondent District Attorney ever receive an extension to file the proposed amendments in violation of *Rule 186* of the Rules of Court, thereby *waiving* the People's right to make modifications, changes, or corrections in the proposed statement.

8. That in late November 1986, I learned from the Clerk of the Municipal Court that notwithstanding my continuing recusal and disqualification of Judith O. Stein commencing on March 18, 1986 when written recusal was sought and despite her refusal to permit me to *file or lodge* said written disqualification, and despite no less than twenty (20) subsequent demands that said Judith Stein cease and desist in any and all further conduct in the trial or post trial proceedings, she intended to proceed to settle the statement on appeal.

9. That on December 5, 1986, I immediately moved this Court for a writ seeking to prohibit Judith O. Stein from acting any further because of the disqualification, and because I specifically cited her disqualification as a grounds for appeal, and because a "disqualified" judge is barred from setting the record (*Rule 187*).

10. That notwithstanding the express statutory prohibition against a disqualified judge from acting to settle and/or certify the statement and notwithstanding Judith Stein's disqualification being a paramount ground for this appeal, Abby Soven of this Court, acting as Depart-

ment 70 judge, in gross derogation and in abuse of her office, denied my writ on the grounds that it was "premature," despite *present irreparable injury to my statutory rights* (as more fully appears in LASC No. C-627582.)

11. That on January 12, 1987, I learned of an order issued by said disqualified trial judge "certifying" that Respondent District Attorney's Response filed "*out of time*" by more than a month and a half would "constitute the settled statement on appeal," a copy of said "certified settled statement" is identified as *EXHIBIT "C"* and attached herewith.

12. That on January 22, 1987, I filed a motion to strike the "certified settled statement on appeal" on the grounds that the People had *waived* their right to modify the proposed statement filed by Appellant on October 20, 1986, by their untimely response (see *EXHIBIT "D"* dated December 8, 1986), and that the statement was not in conformity with the Rules of Court and was a gross and fraudulent misrepresentation of evidence and facts adduced at trial, and otherwise *void ab initio*, and that said acts (of settlement) by the trial court were in furtherance of a criminal conspiracy to abrogate my civil and constitutional rights and liberties guaranteed by the state and federal constitutions.

13. That on February 24, 1987, in response to Appellant's motion to strike referenced above filed on January 23, 1987, the Court entered a *remand order* admonishing the trial court of its *mandatory obligations* that "said settled statement *shall include appellant's grounds on appeal and the evidence pertaining thereto*" as more fully appears in *EXHIBIT "E"* attached herewith. Further, the Court specifically apprised the trial court of the format to be followed, citing *People v. Jenkins*, 55 Cal. App. 3d Supp. 55 (1976), and gave a time deadline of thirty (30) days from the issuance of the order on February 24, 1987, to have the statement settled.

14. That I contacted the Appellate Department in April and May of 1987 regarding receipt of the settled statement, and was advised none was received.

15. That I contacted the Appellate Department specifically on June 18, 1987, June 30, 1987, July 10, 1987 and August 18, 1987, and advised the Clerk that my constitutional due process rights to a meaningful and expeditious appellate review were being aggrieved irreparably by inordinate delay.

16. That on August 26, 1987, I contacted the Clerk of the Appellate Department and learned that finally (six (6) months *after* this Court had ordered her to do so) the trial court certified a settled statement, but that a copy was not served upon me (appellant) or furnished me by the trial court as required by law. I requested a copy from the Appellate Department.

17. That a true and correct copy of said settled statement is identified as *EXHIBIT "F"* and attached herewith.

18. That at *no point in time* since filing my Notice of Appeal have I *ever been advised* by the trial court or clerk of "an order to appear at any hearing" on settlement of the statement or resettlement of the statement in the aforecaptioned appeal, or have I ever received any notice of such an order, written or otherwise.

19. That the statement as settled by the trial court on August 17, 1987, despite specific admonitions and advices from this Court to the trial court, and despite six months of elapsed time, is *exactly* the same as the January 7, 1987 settled statement other than it now contains Appellant's Grounds for Appeal. Further, the statement as settled is a rank fraud.

20. That the trial court's actions are gross and consciously designed to protract the appellant in the process and to foreclose appellant's right to present and perfect

a true and complete appllate record ensuring adequate appellate review by this Court, consistent with Appellant's right to receive a proper appellate hearing guaranteed by the due process provisions of state and federal constitutions.

21. As evidence of the fraudulent nature of the settled statement, Appellant shows that the People (District Attorney) made specific fraudulent statements that no jury instructions or request to charge the jury were ever filed by appellant at the time of trial.

22. That as a grounds for appeal, Appellant states that the trial court *never gave any of Appellant's jury instructions or charges*, which Appellant *filed on March* 18, 1986, identified as *EXHIBIT "G"* attached herewith.

23. That the failure of the trial court to instruct on any of the five (5) requested jury instructions is *per se* infirming and reversible error and grossly abridged Appellant's constitutional right to a fair trial.

24. This is but one illustration of the kind of gross fraud and collusion being carried out by the District Attorney and trial court seeking to obstruct and prevent Appellant from perfecting a true and comprehensive settled statement and record on appeal.

25. That on September 15, 1986, one week after I was falsely arrested at the Beverly Hills Courthouse by Judith Stein and held illegally in custody by her when seeking the trial transcripts from Robert Marsh, I directed a letter to the Justices of this Court requesting they order the subject transcripts *on their own motion* to document the heinous, gross and criminal misconduct and abuse of process by the trial court and District Attorney (a copy of said letter is identified as *EXHIBIT "H"*.)

26. That in view of the trial court's active and willful interference with my right to secure an adequate record on appeal and its attempt to abrogate this Court's ap-

pellate review, the transcripts of evidence should be ordered by this Court as they document the gross criminal misconduct by the trial court, continuing to this date.

27. That I have received *no orders whatsoever* from the trial court or clerk of the trial court pertaining to settlement of the statement or any matters related or ancillary thereto.

28. That the proposed statement on appeal filed timely by me (EXHIBIT "B") pursuant to this Court's order sets forth twenty-five (25) pages of grounds for appeal and facts and evidence relating to those grounds for appeal consistent with the appellate strictures of this Court set forth in *People v. Jenkins supra*. All the statements are true and correct and factual and the actual reporters transcripts will so document.

29. That I filed a written demand for a pre-sentencing report, probation report and probation hearing with the trial court on March 27, 1986, which demand the Court totally ignored and rebuffed when I was threatened with contempt and when it sentenced me on April 7, 1986, consciously preventing me from any arraignment at sentencing or from being heard *whatsoever*. I was chained and threatened with violence by the marshall and removed from the courtroom.

30. Pages 22, 23 of said proposed statement filed and served on this Court on October 20, 1986 (almost a year ago) shows the following facts (see Exhibit "B"):

* * * *

APPELLATE DEPARTMENT
OF THE SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

(Title Omitted in Printing)

ORDER DENYING APPLICATION FOR ORDER VACATING BRIEFING SCHEDULE. MOTION TO STRIKE SETTLED STATEMENT AND APPLICATION FOR WRIT

THE COURT *

Defendant's application for order vacating this court's briefing schedule, motion to strike the settled statement and application for writ having been filed and having been duly considered,

Said applications and motion are hereby denied.

The order fixing dates to file briefs in this matter is vacated and brief dates are re-set as follows:

Appellant's Brief—October 20, 1987

Respondent's Brief—November 9, 1987

Appellant's Reply Brief—November 19, 1987

/s/ Soven

/s/ Newman

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* Before Soven, Acting P.J., and Newman, J.

IN THE APPELLATE DEPARTMENT
OF THE SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

(Title Omitted in Printing)

APPELLANT'S MOTION AND DEMAND FOR REPORTERS TRANSCRIPTS AT PUBLIC EXPENSE; DECLARATION OF EUGENE J. CARELLA; MEMORANDUM OF POINTS AND AUTHORITIES

Filed January 26, 1988

For Immediate Action

TO: JUDGES OF APPELLATE DEPARTMENT, SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, CENTRAL DISTRICT

COMES NOW, EUGENE JOHN CARELLA, ESQ., Appellant herein, without waiver of disqualification to the Judges of the Appellate Department of the Superior Court of California, County of Los Angeles, Central District, and pursuant to the Rules of Court and the Supreme Court mandate of *In Re Armstrong*, 126 CA 3d 565, 178 CR 902 (1981), and moves this Court for an Order directing that the entire Transcripts of Proceedings in the false and criminally-inspired and orchestrated trial proceedings, the subject of this appeal, be prepared and provided to Appellant at public expense and concurrently filed with the Appellate Department of the Superior Court to be used in the adjudication of Appellant's appeal now pending before this Court.

In support of the subject motion, Appellant shows the Court the imperative and indisputable need to have

verbatim reporters' transcripts to document the gross criminal irregularities carried out against Appellant and the necessity to document a total failure and insufficiency of evidence by the People and reprehensible and gross prosecutorial and trial court prejudice, misconduct and fraud used to secure the false judgment and verdict now before this Court.

Appellant, in addition to making a prima facie showing for the need for said reporters' transcripts, also shows his Affidavit for Present Financial Indigency identified as *EXHIBIT "A-3"* and attached herewith and incorporated and made a part of his Declaration (EXHIBIT "A") documenting his incapacity to pay for said transcripts. That failure to accord Appellant a reporter's transcript and made a part of the Record on Appeal will result in irreparable injury to Appellant in the disposition of his appeal not yet submitted to this Court, and will grossly abridge his constitutional right to due process of law, as the certified "settled statement" prepared by the trial court is a fraudulent, misrepresentation of the proceedings and evidence adduced at trial; that the purpose and objective of this appellate court will also be served by the preparation and filing of the Reporters' Transcripts, as said transcripts set forth "fairly and accurately" the evidence and proceedings below and fully demonstrate a total abrogation of this Appellant's constitutional rights at time of trial, as is more completely demonstrated in the grounds for appeal.

Said motion is based upon all papers, pleadings, documents, and the like on file herein—together with the Declaration of Appellant, identified as *EXHIBIT "A"* and the Memorandum of Points and Authorities attached herewith.

DATED: January 22, 1988

By: /s/ Eugene John Carella
EUGENE JOHN CARELLA

EXHIBIT "A"

DECLARATION OF EUGENE J. CARELLA, ESQ.

I, EUGENE J. CARELLA, declare and state as follows:

1. That I am the Appellant herein-defendant below.

2. That I am herewith and hereby specifically demanding that the Reporters' Transcript of Trial Proceedings, the subject of this appeal, be furnished to me and made a part of the Record on Appeal and filed with this Court forthwith.

3. That a true and correct copy of a Proposed Statement on Appeal and Notice to Prepare and Incorporate Reporters' Transcripts in Statement which was filed with the trial court on or about June 14, 1986 is identified as *EXHIBIT "A-1"* and attached herewith, consisting of nine (9) pages.

4. That these grounds for appeal have been certified by the trial court in the Statement on Appeal.

5. That a review of said Grounds for Appeal demonstrates twenty-four (24) separate grounds for appeal, several of which assert gross prosecutorial and trial court misconduct, fraud and prejudice which *can only be evidenced by verbatim reporters' transcripts.* (Grounds Nos. 7, 14, 15, 17, 18 and 22).

6. That Appellant further urges this Court to throw out the bogus and false judgment and conviction of the trial court on the grounds of a "complete insufficiency of evidence" and failure of proof by the People (Ground No. 10, 18, 21) and that the trial court failed to allow and admit important evidence to support Appellant's defense (Ground No. 20); and committed gross irregularities and errors of constitutional proportion regarding the giving of prejudicial jury instruction (Ground No. 6); and re-

fused to make other mandatory jury instructions required by her as a *matter of law* to protect Appellant's constitutional rights to a fair trial (Ground No. 5).

7. That the "settled statement" certified by the trial judge is gross and material misrepresentation of the evidence and proceedings occurring in the trial court, and is also lacking its requirement to set forth "concise factual summaries of each of the proceedings before the court from arraignment to judgment, including a recitation of the manner in which each of defendant's constitutional rights were protected." *See, People v. Jenkins*, 55 CA 3d, Supp. 55, 127, CR 870 (1976).

8. That I have been the victim of a common enterprise of criminal racketeering utilizing various state and federal courts throughout the United States to deprive me of my attorney fees, costs, and contingency fees earned by and owed to me, and to destroy my livelihood, person, and federal practice and reputation.

9. That the subject prosecution, the subject of this appeal, is but "one component" of this invidious criminal racketeering conspiracy orchestrated by state and federal officials.

10. That I am a distinguished legal advocate and recognized as such in *Who's Who in American Law* because of my contributions to the legal profession and that I was arguing a case in the United States District Court for the Central District of California on *June 18, 1985*—one (1) week before the false arrest.

11. That on or about January 20, 1988, a few days ago, I received word from the United States Supreme Court that my attempts to have the United States Court of Appeals for the Ninth Circuit to grant me attorneys fees in this matter earned and owed to me and represented to be paid to me (now exceeding $200,000) was rejected. (A copy of said Supreme Court Order is identified as *EXHIBIT "A-2"* and attached herewith.

12. That I had fully intended to receive these monies, inasmuch as the District Court for the Central District of California authorized an "attorney lien" to protect my *quantum meruit legal services* in a successful ERISA (Employee Retirement Income Act of 1974) litigation I conducted against General Electric Company, Inc., et al. on behalf of asbestosis-affected pension plan beneficiary who had been cheated out of all his disability and retirement benefits, but now enjoys a substantial settlement on account of my legal efforts and time expended on his behalf.

13. That I have expended well in excess of $200,000.00 of monies (pro bono out-of-pocket monies) and in excess of $1 million of billable time on behalf of said client's seeking redress in the federal court system.

14. That in view of the Supreme Court's denial on January 11, 1987 directing that my fees be paid to me, I am now at this time financially incapacitated and indigent, having exhausted all of my resources on behalf of client causes.

15. That the enclosed "Declaration of Financial Condition" in support of my demand for a Reporter's Transcript at public expense is a true and correct statement of my financial condition at this time and I am unable to pay for the Reporters' Transcripts which I have been advised by the Court Reporter would be between $5,000-$6,000.

16. That the Reporters' Transcripts of Proceedings are material and essential to adjudicate my appeal and will greatly assist the Court in its appellate decision-making and ensure the interest of justice.

17. That I further state that the subject trial proceedings before this Court were in furtherance of a criminal racketeering conspiracy authorized by the highest members of the Reagan Administration and done with the knowledge, consent and approval and affirmation of Ron-

ald Reagan personally, together with other high-ranking members of the Administration and carried out against me—including, but not limited to, Edwin Meese, William French Smith and William Webster.

18. That it is *impossible* for me to have a fair appeal, hearing or fair adjudication or fair trial without the preparation of the Reporters' Transcripts at public expense and I have made a *prima facie* showing for their need before this appeal is submitted to the Court for adjudication.

19. That the prospect for my financial condition to improve in the next six to twelve months is extremely marginal, as the conspiracy to deprive me of all my legal fees and earnings and bar practice has been further amplified and exacerbated by the subject malicious false proceedings.

20. That there is no plausible reason the People can advance to deny the motion, inasmuch as I have alleged a criminal "misuse of trial court proceedings" which Ira Reiner has a duty to investigate, and said trial transcripts demonstrate criminality in the conduct of the proceedings against me.

21. That I further specifically request that the Court direct Robert Morse, Court Reporter, to forthwith prepare the transcripts of trial proceedings set forth in Pages 8, 9 of EXHIBIT "A-1" attached herewith.

22. That I further request the oral argument on the appeal scheduled for January 28, 1988 be continued for a period of sixty (60) days to allow the Court to receive and review the transcripts referenced herein.

I declare that the foregoing is true and correct to the best of my knowledge and ability.

Executed on this 25th day of January 1988 in Los Angeles, California.

/s/ Eugene John Carella, Esq.
EUGENE JOHN CARELLA, ESQ.

EXHIBIT "A-3"

THIS FORM MUST BE KEPT CONFIDENTIAL

APPELLATE DEPARTMENT
OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Superior Court No. CR A 24001

Trial Court No. M 83675

Beverly Hills

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs.

EUGENE JOHN CARELLA,
Defendant and Appellant.

REQUEST FOR TRANSCRIPT AT PUBLIC
EXPENSE AND
DECLARATION OF FINANCIAL CONDITION

I request an order of this court directing preparation of Reporters' Transcripts at public expense in my [appeal to the Superior Court] No. 24001 filed on April 7, 1986.

In support of the foregoing request, I declare:

1. My full name is Eugene John Carella.

2. My address is P.O. Box 67292 Century City, Los Angeles, California 90067.

3. I am a person who does not have the money for Reporters' Transcripts without using money needed for the necessities of life and I do not have credit to borrow the needed sum.

My present income, assets and expenses are:

A. *OCCUPATION:* Attorney.

1. I *am not* presently employed.

a) My present employer is:

Whose address is:

b) If not employed now, my last period of employment was April 1984 to Sept. 1984.

c) Last employer's name Bretcourt Financial Planning, Inc.

Whose address was 1317 W. Foothill Blvd., Upland, California.

B. *MARTITAL STATUS:*

1. Married ☐ Single ☒ Other ☐

2. Spouse: Is employed ☐ Is not employed ☐

C. *EMPLOYMENT INCOME*

1. Current gross monthly employment income (including welfare, unemployment)

None.

2. Current monthly fixed deductions:

Witholding tax:

Federal Not applicable.

State Not applicable.

Social Security (FICA) Not applicable.

Unemployment Insurance Not applicable.

Medical Insurance Not applicable.

Dental Insurance Not applicable.

Union Dues Not applicable.

Retirement Contribution Not applicable.

Other payroll deductions (indicate for what purposes money is witheld) Not applicable.

TOTAL DEDUCTIONS Not applicable.

NET MONTHLY EMPLYOMENT INCOME

None.

D. *INCOME OTHER THAN EMPLOYMENT INCOME*

Any other income: (List all sources of income here, other than wages, including aid for dependent children; Social Security; rents; dividends; interest; pensions; trusts; or money from any source:)

1. None.

E. *ASSETS*

Savings Accounts None.

Checking Accounts None.

Credit Union(s) None.

Bonds and Stocks None.

Home (market value) None.

Home loan balance NET: None

Other real estate (market value) None.

Loan balance NET: None

Furniture

Vehicles (net value after deducting loan balances)

Auto(s) None.

Truck(s) None.

Motorcycle(s) None.

Other property (boats, etc.) None.

Retirement fund—vested interest None.

TOTAL ASSETS None.

F. *EXPENSES*

My monthly living expenses are paid mainly from the money I receive from—(List source of money used to pay expenses—wages, welfare, etc.) Money borrowed from friend.

Rent or mortgage N/A.

Food 100/mo.

Clothes 10/mo.

Transportation 20/mo.

Utilities N/A.

Medical N/A.

Dental 20/mo.

Child care N/A.

Other (List) N/A.

150/mo.

INSTALLEMENT PAYMENTS

Creditor	*Monthly Payment*
N/A.	N/A.

TOTAL MONTHLY EXPENSES 150/mo.

4. The names and ages of my dependents are:

Name	*Age*
None.	

5. Crime which I was convicted of: Theft of rental Nature: automobile. furnished to me pursuant to rental contract.

6. Name and address of attorney who represented me at the trial was: N/A.

7. Describe briefly what attempts you have made to find a lawyer to handle this appeal for you, and why you cannot get your own lawyer. N/A.

I declare under penalty of perjury that the foregoing is true; and that this declaration was executed on January 25, 1988, at Los Angeles, California.

/s/ Eugene John Carella
EUGENE JOHN CARELLA

APPELLATE DEPARTMENT
OF THE SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Superior Ct. No.CRA24001

Municipal Court of the
Beverly Hills Judicial District

No. M83675

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs.

EUGENE JOHN CARELLA,
Defendant and Appellant.

MEMORANDUM JUDGMENT

This cause having been submitted for decision, and fully considered, judgment is ordered as follows:

The judgment is affirmed.

Defendant contends that the trial court erred in instructing the jury concerning the presumptions contained in Penal Code section 484 subdivision (b) and Vehicle Code section 10855. We do not agree. Both presumptions are presumptions affecting the burden of producing evidence. (See *People v. Hemmer* (1971) 19 Cal.App.3d

1052, 1060-1062.) The effect of such presumptions, under Evidence Code section 604, is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence. (See *People v. Hedrick* (1980) 105 Cal.App.3d 166, 170.) Here, unlike the defendants in *Hemmer* and *Hedrick*, defendant never offered testimony concerning the nonexistence of the presumed facts stated in Penal Code section 484 subdivision (b) and Vehicle Code section 10855. We find no error.

Defendant next contends that the trial court erred by not giving an instruction concerning a good faith belief or mistake of law or fact. However, defendant offered no evidence to support the giving of such instructions. Again, there was no error. (*People v. Vineberg* (1981) 125 Cal.App.3d 127, 138.)

Next, the court docket directly contradicts defendant's contention that he did not waive time on July 1, 1985. Thus, the record shows there was no violation of defendant's speedy trial rights.

Defendant contends that the court was required to stay judgment and sentencing pending defendant's appeal. The record, however, shows that the trial court set bail for defendant pending his appeal. Such was all that was required. (Pen. Code, § 1272(2).)

Defendant next claims that the trial court erred by not obtaining a pre-sentencing probation report before sentencing defendant. The trial court had no mandatory duty to do so. (Pen. Code, § 1203(d).)

Our review of the record convinces us that substantial evidence supports defendant's conviction. (*People v. Johnson* (1980) 26 Cal.3d 557, 562.)

We need not address defendant's remaining contention. (Cal. Rules of Court, rule 105(c); see *People v. Merriam*

(1967) 66 Cal.2d 390, 397.) We observe, however, in our review, no evidence to support appellant's contention.

/s/ Margolis
Presiding Judge

We concu[illegible]

/s/ [Illegible]
Judge

/s/ Woods
Judge

Filed February 3, 1988

IN THE APPELLATE DEPARTMENT
OF THE SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Appeal No. CRA 24001

LAMC M 83675

EUGENE JOHN CARELLA,
Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

APPELLANT'S PETITION FOR REHEARING AND APPLICATION FOR TRANSFER; DECLARATION OF EUGENE JOHN CARELLA; DECLARATION OF PAULA PFISTER; MEMORANDUM OF POINTS AND AUTHORITIES

Filed February 18, 1988

TO: JUDGES OF APPELLATE DEPARTMENT, SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, CENTRAL DISTRICT [WITHOUT WAIVER OF DISQUALIFICATION TO JUDGES NEWMAN, MARGOLIS, WOODS, ROBERTSON]

COMES NOW EUGENE JOHN CARELLA, ESQ., Appellant herein, without waiver of disqualification to Judges of Appellate Department of Superior Court of

California, County of Los Angeles, Central District, as constituted, pursuant to the Rules of Court and the Supreme Court mandate in *In Re Armstrong*, 126 CA 3d 565, 178 CR 902 (1981), and moves this Court for an Order of Rehearing and Reconsideration of the Memorandum Judgment of February 3, 1988 and further order that a complete Transcript of Proceedings in the void and criminally-inspired and orchestrated trial proceedings, the subject of this appeal, be prepared and provided to Appellant at public expense and concurrently filed with the Appellate Department of the Superior Court to be used in the adjudication of Appellant's appeal now pending before this Court.

In support of the subject petition of rehearing and reconsideration, Appellant shows this Court the Declaration of Eugene J. Carella, Esq. and Paula Pfister, demonstrating *prima facie* the fraud committed by the trial court and People in the preparation of the trial evidence as reflected in the Certified Settled Statement settled by the trial court who was disqualified; the egregious abrogation of Appellant's constitutional due process and equal protection rights to have a complete transcript of trial evidence prepared at public expense and filed as part of the record to document his twenty-four (24) grounds on appeal; and a gross misapplication and misapprehension of facts and law by the Appellate Department, the members of which are the subject of vigorous disqualification foreclosing further action and invalidating prior action who have in common enterprise with the trial judge excised and obstructed material evidence from Appellant's record on appeal, all of which summate to deny Appellant-Petitioner herein a fair trial, and constitutionally sufficient adjudication on appeal. Appellant prays his Petition for Rehearing be granted and that the Appellate Department's judgment of February 3, 1988 affirming the judgment of the trial court be promptly vacated by a panel of this Court free from bias and

prejudice against Petitioner and that the judgment of conviction be vacated post haste because of gross, irreparable and infirming injury and fraud carried out against Appellant, denying Appellant's fundamental right to due process and equal protection of law and a fair trial and fair adjudication on appeal.

Said petition is based on all papers, pleadings, declarations, and the like on file here—together with memoranda of points and authorities and said further and additional evidence as may be adduced.

DATED: February 17, 1988

By: /s/ Eugene John Carella, Esq.
EUGENE JOHN CARELLA, ESQ.
Appellant

EXHIBIT "A"

DECLARATION OF PAULA E. PFISTER

I, PAULA E. PFISTER, declare and state as follows:

1. That I reviewed the testimony alleged to have been furnished by me at the time of trial of Eugene J. Carella as represented in the Certified Settled Statement.

2. That the testimony I actually rendered at the trial has been significantly and substantially *altered* and the statements ascribed to me in the settled statement are not true and correct and are known to be inaccurate by the trial judge and District Attorney.

3. That at the time of trial I testified that I was physically with Mr. Carella on the late afternoon of May 11, 1985 when Mr. Carella physically visited the rental offices of MPG Car Rental at the intersection of Doheny and Wilshire Boulevard.

4. That I further testified that it was my knowledge that Mr. Carella had substantial monies with him when he went to the MPG Car Rental office and did for the purpose of making further and additional payment on his account.

5. That I further testified that MPG Car Rental Office and the Union 76 Service Station physically adjoin one with another and that Mr. Carella after not being able to locate anyone at MPG inquired at the Union 76 station if they knew where the MPG personnel were or if they could accept payment for them.

6. That I also testified that Mr. Carella also secured gas from the Union 76 at Doheny/Wilshire adjoining the MPG office after he could not find anyone and secured *a receipt signed and stamped May 11, 1985, which receipt would not be permitted to be entered as evidence at the time of trial.*

7. That I further testified that Mr. Carella was physically present and in Los Angeles and at the Century Wilshire Apartment location where he resided for a period of approximately two (2) years at all material times and for each and every night in 1984 and 1985, excepting a weekend visit to Palm Springs, and lived in the Los Angeles area and was prosecuting legal matters in the state and federal court located in Downtown Los Angeles regularly and had made various appearances in these courts during this time in question.

8. That I further state that while on the witness stand Mr. Carella showed me a copy of the receipt he received from the Union 76 service station dated May 11, 1985 which he sought to have me authenticate and sought to introduce the receipt into evidence, but the court would not let him.

9. That I further state that I personally accompanied Mr. Carella on June 20, 1985 (*one week before the false arrest*) to the law offices of Roper & Folino located at 3255 Wilshire Boulevard and attended a conference scheduled by Charles Woodmansee, a court-appointed referee (Jack Newman involuntarily appointed him), in litigation in which Mr. Carella and I were both plaintiffs, e.g., *Eugene J. Carella, Esq., Paula Pfister v. Sheraton Corporation*, LASC No. 516 399, where Mr. Carella and myself are suing for Unruh Civil Rights violations and false imprisonment, assault and batter charges and numerous other claims for damages and injunctive relief.

10. That I further state that I had personal knowledge that Mr. Carella also during the week of June 20, 1985, a few days before the false arrest, physically visited and met with Roscoe Jones, Director of the Federal EEOC (Equal Employment Opportunity Commission) in Los Angeles, located at 3255 Wilshire Boulevard, the same location of Roper & Folino, and filed a housing and employment discrimination charge with that office still pending with that Federal commission.

11. That I further state that I know that Mr. Carella on June 18, 1985 just nine (9) days before the subject false arrest was in the U.S. District Court for the Central District of California seeking to be heard on the question of $140.000 of attorney fees owed to him in litigation commenced against General Electric, Inc. and his attorney lien granted him by the district judge. This Court is located at 312 N. Spring Street, Los Angeles, California.

12. That Judge Judith Stein prevented Mr. Carella from introducing evidence of any of these proceedings and/or to take mandatory judicial notice of them, even though Mr. Carella diligently sought to have such evidence introduced at the time of trial on March 17, 1986, and thereafter.

12. That I have specifically reviewed the settled statement certified by Judith Stein on August 17, 1987, and, in particular, the summary of my testimony. The testimony assigned to me is distorted and altered substantially, to wit: 1) I testified I traveled with Mr. Carella to MPG Rental office on the late afternoon of May 11, 1985, not the *evening*; 2) the statement that she knew that appellant had a large amount of cash on him at the time (May 11, 1985) is true, but the following statement . . . "*she did not know what he was going to do with the money*" is an outright lie and falsehood, and known to be such.

13. That I further specifically state that while on the witness chair I was harassed, intimidated and threatened by the trial judge Judith Stein and that she had also violated my rights when I was absent from the courtroom by having my person and purse searched over my protestation and when there was no reason for this conduct.

14. That I further state that the subject rental vehicle was put in a Century Wilshire parking space which was accessible to inspection each and every night in question,

located at 10776 Wilshire Boulevard—a little more than a mile from the MPG Rental offices.

15. That I further state that I was percipient to Mr. Carella's false arrest at the Century Wilshire Apartments in the early morning of June 27, 1985 when I heard Mr. Carella inform Detective Schwab that he had spoken to Jennifer Ayres of the Beverly Hills Police Department who advised him "that 'Schwab' was on an extended vacation."

16. That I am aware that Mr. Carella had gone to the Beverly Hills Municipal Court to see the court reporter Robert Marsh (September 1985) on the transcripts when he was ordered arrested again by Judith Stein to prevent him from obtaining the subject transcripts and documenting his appeal.

17. That I had filed a complaint with the Police Department of Inglewood and the District Attorney's office *just prior to the false arrest of Mr. Carella on the grand theft and conversion of all my property, files and possessions acquired over a twenty (20)+-year period and monies taken under false pretenses for the safekeeping of this property.* Mr. Carella's property, files and possessions and monies were also with this property that was converted/thefted.

18. That the Police Department and District Attorney's office refused to do anything about this matter, and shortly thereafter caused the false arrest of Mr. Carella for the same charges I lodged with them on the theft/conversion of our property.

The foregoing statements are true and correct to the best of my knowledge and ability.

Executed on this 17th day of February 1988 in Los Anageles, California, under penalty of perjury.

/s/ Paula Pfister
PAULA PFISTER

EXHIBIT "B"

DECLARATION OF EUGENE J. CARELLA, ESQ.

I, EUGENE J. CARELLA, ESQ., declare and state as follows:

1. That I am the appellant-petitioner herein.

2. That the foregoing declaration is made in support of my petition for rehearing and application for transfer to the Court of Appeals made alternatively on said petition.

3. That the subject rehearing petition is filed pursuant to Rule 107 of the Rules of Court.

4. That I further state the judgment of the Appellate Department is so grossly infected with constitutional infirmities, as is the trial judgment, that I am seeking and fully intend to seek appropriate intervention by the Court of Appeal and/or State Supreme Court and/or United States Supreme Court to have the subject fraudulent judgment vacated and thrown out because my constitutional rights to a fair trial and for hearing have been irreparably and irrevocably violated.

5. That I am accordingly requesting that this Court stay the issuance of remittitur consistent with Rule 144 (c) of the Rules of Court should it not be disposed to grant the instant petition for rehearing to enable me sufficient time to have the constitutional injuries and infirmities complained of reviewed and redressed by a higher court.

6. That I specifically incorporate the declaration of Paula E. Pfister identified as *EXHIBIT "A"* and attached herewith as being recited in support of this declaration.

7. That the Appellate Department decision, the subject of the petition for rehearing, is grossly defective and constitutionally infirmed for the following reasons:

(a) It was rendered by Appellate Department judges who are disqualified and the subject of a disqualification for cause petition, requiring all orders, judgments and the like of said Appellate Department be vacated;

(b) It is infirmed because Appellant, who is financially indigent, has been deprived of his fundamental constitutional right to a Reporters Transcript of Trial Evidence furnished him and made a part of the Record on Appeal to document his twenty-four (24) grounds for appeal. (*In Re Armstrong*, 126 CA 3d 565, 128 CR 902 (1981);

(c) The settled statement certified by the trial court is a fraud, sham, nullity and not drawn in conformity with the Rules of Court or mandates of the Supreme Court of the State. (*See, People v. Jenkins*), and should be stricken.

(d) The memorandum judgment willfully mistates evidence and falsely indicates a waiver by Appellant of his constitutional right to a speedy trial which is in direct contradiction to what actually occurred at the pre-trial proceedings;

(e) The memorandum judgment consciously and willfully fails and refuses to consider and address each of the grounds for appeal set forth in the certified settled statement, each of which requires that the trial court judgment be vacated and thrown out as a matter of law;

(f) That the judgment misapprehends the law with respect to mandatory jury instructions and sua sponte instruction required to be made by the trial judge and further ignores the notice and demand requirements mandated by due process consideration before jury instructions on the presumption of Sections 484 and 10855 of the Penal Code and Vehicle Code can be given;

(g) The combination of the Appellate Department's conscious refusal to order the complete Reporters' Transcripts of Trial Evidence, at the same time it seeks to

conclude that *no evidence exists to document Appellant's grounds of appeal* constitutes an actionable fraud on Appellant and taints the judgment.

8. That I specifically state that in January 1986 *prior* to the start of the actual trial proceedings, in open court before visiting Judge Morse I had the Court Reporter Douglas Weaver read his notes for the actual proceedings that occurred before Commissioner Murphy on June 27, 1985 and July 1, 1985. At that time, in open court, Mr. Weaver specifically stated that his notes for the subject days stated showed that Appellant "did *NOT* waive his right to a speedy trial" in response to the Commissioner's direct questions of waiver.

9. That the court docket in this regard is obviously false, incorrect, and was to have been corrected by Robert Tauger, Clerk in Division 5, who was aware of the incorrect docket entry showing a 'waiver.'

10. The Appellate Department judgment is therefore infirmed because it is based on false and mistaken facts and the Reporters Transcripts will so verify.

11. That the Appellate Department judgment also failed to specifically address the gross error committed by the trial court by refusing to grant Appellant a presentencing probation hearing, at the same time it immediately sentenced Appellant and refused to stay the sentencing and judgment pending his appeal in derogation of the laws of this State.

12. That I further state the Reporters Transcripts of Trial Proceedings demanded by me to be made a part of the Record demonstrate *prima facie* the validity of the twenty-four (24) grounds for appeal recited by me in my Proposed Settled Statement and command the judgment, the subject of this petition, and the underlying trial court judgment, be forthwith vacated. Accordingly,

I specifically demand that the Reporters Transcripts be prepared and filed with this Court at public expense.

13. That two (2) salient grounds for appeal conspicuously not addressed and omitted by the Appellate Department are the disqualification of the trial court moved by Appellant as reflected on the *docket sheet* which renders null and void all orders of the trial judge, and the gross acts of prosecutorial misconduct ranging from disparaging references of Appellant to the use of diagrams, charts and documents not authenticated or moved in evidence during the course of the trial.

14. That I advised the Appellate Department as far back as *October 1986* that the trial judge, who is disqualified, had consciously interfered with and obstructed my rights to secure the Reporters Transcripts by having me falsely arrested after I was ordered by the Appellate Department to secure from the Court Reporter Marsh information concerning said Reporters Transcripts.

15. That my right to secure the subject transcripts at public expense is a fundamental constitutional due process right which is essential to ensure me a fair trial and fair appellate adjudication of my rights on appeal.

16. That Judges Newman, Margolis, Robertson and Woods are disqualified from acting in these proceedings and I specifically demand a successor Appellate Department appointed in accordance with law be convened to adjudicate my appeal and all the grounds asserted therein on the basis of a complete and true record on appeal, including the Reporters Transcripts of Trial Proceedings and that they be preempted from acting further herein.

17. That I specifically incorporate my Motion and Demand for Reporters Transcripts at Public Expense, together with Exhibits filed with the Appellate Department on January 26, 1988 into the within declaration.

I declare that the foregoing is true and correct to the best of my knowledge and ability.

Executed on this 17th day of February 1988 in Los Angeles, California, under penalty of perjury.

/s/ Eugene John Carella
EUGENE JOHN CARELLA, ESQ.

APPELLATE DEPARTMENT
OF THE SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Superior Ct. No. CR A24001

Municipal Court of the Beverly Hills Judicial District

No. M 83675

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs.

EUGENE JOHN CARELLA,
Defendant and Appellant.

ORDER DENYING DEFENDANT'S PETITION FOR REHEARING AND APPLICATION FOR TRANSFER

Filed February 24, 1988

THE COURT*

The above petition and application having been made, submitted and duly considered,

Said petition and application are denied.

IT IS FURTHER ORDERED that all other demands included in the above petition and application are denied.

/s/ Margolis
/s/ Roberson
/s/ Woods

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* Before Margolis, P.J., Roberson, J., and Woods, J.

SUPREME COURT OF THE UNITED STATES

No. 87-6997

EUGENE JOHN CARELLA,
Appellant,

v.

CALIFORNIA

APPEAL from the Appellate Department, Superior Court of California, Los Angeles County. The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

November 7, 1988

SUPREME COURT OF THE UNITED STATES

No. 87-6997

EUGENE JOHN CARELLA,
Appellant,

v.

CALIFORNIA

The order entered November 7, 1988 is amended to read as follows:

"The motion of appellant for leave to proceed *in forma pauperis* is granted. In this case probable jurisdiction is noted limited to Questions I, II, III, IV, V, and VII presented by the jurisdictional statement."

November 28, 1988

SUPREME COURT OF THE UNITED STATES

No. 87-6997

EUGENE JOHN CARELLA,
Appellant,

v.

CALIFORNIA

ON CONSIDERATION of the motion for appointment of counsel,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted and it is ordered that Christopher D. Cerf, Esquire, of Washington, D.C., is appointed to serve as counsel for the appellant in this case.

December 12, 1988

Justice Brennan took no part in the consideration or decision of this motion.